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August 9, 2011

Christopher Hughey, Esq.
Acting General Counsel
Federal Election Commission
999 E Street, NW, 6th Floor
Washington DC 20463

Re: MUR 6476

Dear Mr. Hughey:

This constitutes the response of Lois Frankel, Lois Frankel for Congress (the "Committee") and its treasurer (collectively, the "Respondents") to the complaint filed by the National Legal and Policy Center ("Complainant"), alleging that Respondents violated the Federal Election Campaign Act (the "Act").¹ For the reasons set forth below, this complaint should be promptly dismissed.

Relying on innuendo and speculation, Complainant alleges that the Committee "has decided to run an off-the-books campaign with respect to campaign expenditures" and has accepted either illegal corporate funds or excessive individual funds to make these expenditures.² These allegations are unsupported and false. The complaint should be promptly and summarily dismissed.

The Commission may find "reason to believe" that a violation has occurred only "if a complaint sets forth sufficient facts, which, if proven true, would constitute a violation of the [Act]."³

¹ At the time the complaint was filed, Lois Frankel served as the Committee's treasurer. Subsequently, Judith Zamore has been appointed as treasurer. See Lois Frankel for Congress, Amended Statement of Organization (June 20, 2011), available at <http://herndon1.sdrdc.com/cgi-bin/fecimg/7C00494856>.

² Complaint, at 6.

³ Statement of Reasons of Commissioners David M. Mason, Bradley A. Smith, Karl J. Sandstrom, and Scott A. Thomas, Matter Under Review 4960 (Dec. 21, 2000), at 1.

77860-0001/LEGAL21497346.2

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COMMISSION
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OFFICE OF GENERAL
COUNSEL

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August 9, 2011

Page 2

Complaints "not based upon personal knowledge must identify a source of information that reasonably gives rise to a belief in the truth of the allegations presented," while "[u]nwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true."⁴ This complaint fails to meet this standard; it is replete with unsubstantiated conclusions that have no basis in fact.

First, Complainant alleges that "[t]here is little doubt that Frankel used direct mail" and concludes that the Committee failed to report the cost of "direct mail fund-raising letters."⁵ Complainant's sole factual basis for this allegation is a single blog post, which states, "West Palm Beach Mayor Lois Frankel (D) says in a fund-raising letter that it's 'critically important' that she raise \$100k in contributions for her just-launched campaign against Rep. Allen West (R) by 3/31, the end of the FEC's 1Q deadline."⁶

As Exhibit A shows, the communication referred to in the blog post was an *e-mail*, not a direct mail piece. The e-mail resulted in no expense for the campaign and, therefore, did not trigger any reporting requirements.⁷ The cited blog post should have alerted Complainant to this fact. Published on March 29, 2011, it describes an appeal that asked for contributions by the March 31, 2011 FEC reporting deadline.

Second, Complainant alleges that the Committee failed to report payments to Brian Smoot, who serves as a consultant to the campaign. Complainant's sole factual basis for this allegation is a news article, dated on March 22, 2011, reporting that the Committee had hired Mr. Smoot as a consultant. The article did not discuss the contractual arrangement between the Committee and Mr. Smoot, nor did it provide any basis for Complainant to conclude that the Committee agreed to pay or did pay Mr. Smoot prior to March 31, 2011 (the end of the reporting period).

And, in fact, it did not. The Committee made its first payment to Mr. Smoot's consulting firm, 4C Partners LLC, on April 14, 2011, after the reporting period had ended for the first quarter. The Committee reported this payment on its second quarter FEC report, filed on July 15, 2011.⁸ Complainant had no factual basis to allege that Mr. Smoot had been paid for his consulting work during the reporting period. As the true facts show, the timetables for billing and payment were

⁴ *Id.* at 1-2.

⁵ Complaint, at 3.

⁶ *Id.*, citing George Bennett, "Six-figure initial haul for Frankel's congressional campaign?", Post on Politics, available at <http://www.postonpolitics.com/2011/03/six-figure-initial-haul-for-frankels-congressional-campaign/>.

⁷ See Advisory Opinion 1999-37 (X-PAC).

⁸ See Lois Frankel for Congress, Second Quarter Report of Receipts and Disbursements (July 15, 2011), at 173, available at <http://herndon1.senate.gov/cgi-bin/fecimg?C00494856>.

well within the ordinary course of business.

Third, the remaining disbursements were *de minimis* and have been correctly reported. On July 15, 2011, Committee filed an amended first quarter report, to show three additional disbursements:⁹

- An in-kind contribution from the candidate, Lois Frankel, to the Committee for \$450.17, for the incorporation and registered agent fees.
- An in-kind contribution from the candidate, Lois Frankel, to the Committee for \$63.58, for telephone costs.
- An unitemized disbursement for \$44.32, for Internet domain fees.

Finally, in its second quarter report, the campaign reported a reimbursement to Craig Auster on April 21, 2011, which included the cost of the campaign's P.O. Box.¹⁰

These expenses are far from the "ghost expenditures" of a "secret benefactor."¹¹ Rather, they were incurred mere weeks before the first report was due, largely by the candidate from her personal funds. The Commission has consistently dismissed matters like this one, where *de minimis* disbursements were left off an initial report and subsequently reported on an amended report.¹² Respondents quickly amended its report to reflect these three additional disbursements,

⁹ See Exhibit B, Lois Frankel for Congress, Amended First Quarter Report of Receipts and Disbursements (July 15, 2011), at 2-4, 70, available at <http://herndon1.sdrdc.com/cgi-bin/fecimg/?C00494856>.

¹⁰ See Exhibit C, Lois Frankel for Congress, Second Quarter Report of Receipts and Disbursements (July 15, 2011), at 191, available at <http://herndon1.sdrdc.com/cgi-bin/fecimg/?C00494856>.

¹¹ Complaint, at 6.

¹² Statement of Reasons, Chairman Scott B. Thomas, Vice-Chairman Darryl R. Wold, Commissioners Lee Ann Elliott, David M. Mason, Darryl L. McDonald, and Karl J. Sandstrom, Matters Under Review 4317 and 4323 (June 14, 1999) (dismissing matter where \$1,000 in contributions had not been reported correctly on initial report); First General Counsel's Report, Matter Under Review 4935, n. 5 (July 17, 2000) (expressing OGC view that Commission should not investigate alleged contribution violations of less than \$4,000); First General Counsel's Report, Matter Under Review 5538 (Mar. 27, 2006) (dismissing complaint where allegations of reporting violations were either rebutted by complaint or of *de minimis* nature); Factual and Legal Analysis, Matter Under Review 5965 (Nov. 20, 2008) (dismissing allegation that campaign failed to report the cost of purchasing eight domain names in its unitemized receipts); Certification, Matter Under Review 5966 (Sept. 11, 2008) (rejecting, on 3-3 vote, OGC recommendation to send admonishment letter to party committee for failing to report \$436.50 in expenditures); General Counsel's Report, Matter Under Review 5988 (July 10, 2008) (dismissing complaint of alleged reporting violation because 9 errors were of *de minimis* nature).

12044312251

August 9, 2011
Page 4

and did so more than one year before the August 14, 2012 primary election.¹³

Because the complaint relies wholly on mere speculation, and is contradicted by the true facts, Respondents respectfully request that the Commission immediately dismiss it.

Very truly yours,



Brian G. Svoboda
Jonathan S. Berkon
Counsel to Respondents

¹³ See <http://election.dos.state.fl.us/calendar/elecdate.shtml>.

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EXHIBIT A

----- Forwarded message -----

From: Lois J. Frankel <info@loisfrankelforcongress.com>

Date: Wed, Mar 30, 2011 at 11:26 AM

Subject: HTML SAMPLE: Gaining Momentum

To: wask@4cpartnersllc.com



Dear Adele,

A lot has happened in the last week- all of it wonderfully positive. Our campaign announcement last Monday generated remarkable enthusiasm here in South Florida. On Thursday, former Congressman Ron Klein told the Sun-Sentinel that he did not plan to run against Allen West, adding:

"Lois is a serious campaigner," he said. "She runs hard. She does it full time."

You can really sense how working families are not happy about who we sent to Congress last year and want a representative who will get things done for them.

Our campaign is off to a great start -but I need your support today to keep this momentum going. The deadline for our first fundraising report is on Thursday. It is critically important that we meet our goal of raising \$100,000 in the one week since our announcement. This will be a hard fought and expensive race. We know that National Tea Party Congressman Allen West will have unlimited funds through his network of ideological national tea party donors...but we are mobilizing support here in Florida.

Please contribute \$250, \$100, or \$50 today to help us reach our goal and show the grassroots strength of our campaign. And please do it right away- before Thursday's deadline.

I am running for congress to do what I have done as West Palm Beach mayor and in the state legislature- get things done for hard working families. In Congress, my mission is clear- put Washington back to work for us - by focusing on jobs and economic development. At the same time, I will also stand up to those national forces that seek take away women's rights and turn the progress our society has made back decades with violent right wing rhetoric. As the Palm Beach Post noted, as Mayor of West Palm Beach, I

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had "big goals and the will to achieve them." We are going to bring big goals, and that same will, to Washington.

We are so close to our fundraising goal - please contribute \$250, \$100, or \$50 right now to help us reach it!

Because of that record of getting things done for the people, there has already been so much enthusiasm to our campaign. With your help, I know that we can meet our first fundraising goal and keep the momentum going.

Thank you for all your support.

Lois

P.S. - Join the fight today! Please contribute \$250, \$100 or \$50 today online by visiting our website at www.loisfrankelforcongress.com.

Paid for by Lois Frankel for Congress

P.O. Box 107
West Palm Beach, FL 33402



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EXHIBIT B

**FEC
FORM 3****REPORT OF RECEIPTS
AND DISBURSEMENTS**

For An Authorized Committee

Office Use Only

1. NAME OF COMMITTEE (in full) **USE FEC MAILING LABEL OR TYPE OR PRINT** Example: If typing, type over the lines

Lois Frankel for Congress

ADDRESS (number and street)

PO Box 775

☐ Check if different than previously reported. (ACC)

West Palm Beach

FL

33401

2. FEC IDENTIFICATION NUMBER

C00494856

CITY

STATE

ZIP CODE

STATE DISTRICT

3. IS THIS REPORT

☐

NEW (N)

OR

☒

AMENDED (A)

FL

22

4. TYPE OF REPORT (Choose One)

(a) Quarterly Reports:

☒

April 15 Quarterly Report (Q1)

☐

July 15 Quarterly Report (Q2)

☐

October 15 Quarterly Report (Q3)

☐

January 31 Year-End Report (YE)

☐

Termination Report (TER)

(b) 12-Day PRE-Election Report for the:

☐

Primary (12P)

☐

General (12G)

☐

Runoff (12R)

☐

Concession (12C)

☐

Special (12S)

Election on

in the State of

(c) 30-Day POST-Election Report for the:

☐

General (30G)

☐

Runoff (30R)

☐

Special (30S)

Election on

in the State of

5. Covering Period

01

01

2011

through

03

31

2011

I certify that I have examined this Report and to the best of my knowledge and belief it is true, correct and complete.

Type or Print Name of Treasurer

Judith Zamore

Signature of Treasurer

Electronically Filed by Judith Zamore

Date

07

15

2011

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Report to the penalties of 2 U.S.C 437g.

Office
Use
Only**FEC FORM 3**
(Revised 02/2003)

FESAND18

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SUMMARY PAGE

of Receipts and Disbursements

2 / 71

FEC Form 3 (Revised 02/2003)

Write or Type Committee Name

Lois Frankel for Congress

Report Covering the Period:

From:

MM
01DD
01YYYY
2011

To:

MM
03DD
31YYYY
2011

	COLUMN A This Period	COLUMN B Election Cycle-to-Date
6. Net Contributions (other than loans)		
(a) Total Contributions (other than loans) (from Line 11(e)).....	256663.07	256663.07
(b) Total Contribution Refunds (from Line 20(f)).....	0.00	0.00
(c) Net Contributions (other than loans) (subtract Line 6(b) from Line 6(a)).....	256663.07	256663.07
7. Net Operating Expenditures		
(a) Total Operating Expenditures (from Line 17).....	1264.11	1264.11
(b) Total Offsets to Operating Expenditures (from Line 14).....	0.00	0.00
(c) Net Operating Expenditures (subtract Line 7(b) from Line 7(a)).....	1264.11	1264.11
8. Cash on Hand at Close of Reporting Period (from Line 27).....	255398.96	
9. Debts and Obligations Owed TO the Committee (Itemize all on Schedule C and/or Schedule D).....	0.00	
10. Debts and Obligations Owed BY the Committee (Itemize all on Schedule C and/or Schedule D).....	0.00	

For further information contact:

Federal Election Commission
999 E Street, NW
Washington, DC 20463
Toll Free 800-424-9530
Local 202-694-1100

DETAILED SUMMARY PAGE
of Receipts

FEC Form 3 (Revised 12/2003)

3 / 71

Write or Type Committee Name
Lois Frankel for Congress

Report Covering the Period:

From:

MM
01DD
01VVVVV
2011

To:

MM
03DD
31VVVVV
2011

I. RECEIPTS	COLUMN A Total This Period	COLUMN B Election Cycle-to-Date
11. CONTRIBUTIONS (other than loans) FROM:		
(a) Individuals/Persons Other Than Political Committees		
(i) Itemized (use Schedule A).....	252150.00	252150.00
(ii) Unitemized.....	3999.32	3999.32
(iii) TOTAL of contributions from individuals..... ➤	256149.32	256149.32
(b) Political Party Committees.....	0.00	0.00
(c) Other Political Committees (such as PACS).....	0.00	0.00
(d) The Candidate.....	513.75	513.75
(e) TOTAL CONTRIBUTIONS (other than loans) (add Lines 11(a)(iii), (b), (c), and (d))	256663.07	256663.07
12. TRANSFERS FROM OTHER AUTHORIZED COMMITTEES.....	0.00	0.00
13. LOANS		
(a) Made or Guaranteed by the Candidate.....	0.00	0.00
(b) All Other Loans.....	0.00	0.00
(c) TOTAL LOANS (add Lines 13(a) and (b)).....	0.00	0.00
14. OFFSETS TO OPERATING EXPENDITURES (Refunds, Rebates, etc.).....	0.00	0.00
15. OTHER RECEIPTS (Dividends, Interest, etc.).....	0.00	0.00
16. TOTAL RECEIPTS (add Lines 11(e), 12, 13(c), 14, and 15) (Carry Total to Line 24, page 4)..... ➤	256663.07	256663.07

DETAILED SUMMARY PAGE of Disbursements

FEC Form 3 (Revised 02/2003)

4 / 71

II. DISBURSEMENTS	COLUMN A Total This Period	COLUMN B Election Cycle-to-Date
17. OPERATING EXPENDITURES.....	1264.11	1264.11
18. TRANSFERS TO OTHER AUTHORIZED COMMITTEES.....	0.00	0.00
19. LOAN REPAYMENTS:		
(a) Of Loans Made or Guaranteed by the Candidate.....	0.00	0.00
(b) Of all Other Loans.....	0.00	0.00
(c) TOTAL LOAN REPAYMENTS (add Lines 19(a) and (b)).....	0.00	0.00
20. REFUNDS OF CONTRIBUTIONS TO:		
(a) Individuals/Persons Other Than Political Committees.....	0.00	0.00
(b) Political Party Committees.....	0.00	0.00
(c) Other Political Committees (such as PACs).....	0.00	0.00
(d) TOTAL CONTRIBUTION REFUNDS (add Lines 20(a), (b), and (c)).....	0.00	0.00
21. OTHER DISBURSEMENTS.....	0.00	0.00
22. TOTAL DISBURSEMENTS (add Lines 17, 18, 19(c), 20(d), and 21) ▶	1264.11	1264.11

III. CASH SUMMARY

23. CASH ON HAND AT BEGINNING OF REPORTING PERIOD.....	0.00
24. TOTAL RECEIPTS THIS PERIOD (from Line 16, page 3).....	256663.07
25. SUBTOTAL (add Line 23 and Line 24).....	256663.07
26. TOTAL DISBURSEMENTS THIS PERIOD (from Line 22).....	1264.11
27. CASH ON HAND AT CLOSE OF REPORTING PERIOD (subtract Line 26 from Line 25).....	255398.96

**SCHEDULE B (FEC Form 3)
ITEMIZED DISBURSEMENTS**Use separate schedule(s)
for each category of the
Detailed Summary PageFOR LINE NUMBER:
(check only one)

PAGE 70 / 71

<input checked="" type="checkbox"/> 17	<input type="checkbox"/> 18	<input type="checkbox"/> 19a	<input type="checkbox"/> 19b
<input type="checkbox"/> 20a	<input type="checkbox"/> 20b	<input type="checkbox"/> 20c	<input type="checkbox"/> 21

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

NAME OF COMMITTEE (In Full)

Lois Frankel for Congress

A.

Full Name (Last, First, Middle Initial)

Deluxe for Business

Mailing Address 3880 Victoria Street North

City	State	Zip Code
Shoreview	MN	55126

Purpose of Disbursement
Business Checks & Supplies

Candidate Name

001
Category/ Type

Office Sought:	<input type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President
State:	District:

Disbursement For:	2012
<input checked="" type="checkbox"/> Primary	<input type="checkbox"/> General
<input type="checkbox"/> Other (specify) ▼	

Transaction ID: D336922

Date of Disbursement

MM	DD	YYYY
03	21	2011

Amount of Each Disbursement this Period

206.04

B.

Full Name (Last, First, Middle Initial)

Lois J. Frankel

Mailing Address 4 Interlachen Circle

City	State	Zip Code
West Palm Beach	FL	33401

Purpose of Disbursement
TelephoneCandidate Name
Lois J. Frankel

Category/ Type

Office Sought:	<input checked="" type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President
State: FL	District: 22

Disbursement For:	2012
<input checked="" type="checkbox"/> Primary	<input type="checkbox"/> General
<input type="checkbox"/> Other (specify) ▼	

Transaction ID: D346492

Date of Disbursement

MM	DD	YYYY
03	26	2011

Amount of Each Disbursement this Period

63.58

* In-Kind Received

C.

Full Name (Last, First, Middle Initial)

Lois J. Frankel

Mailing Address 4 Interlachen Circle

City	State	Zip Code
West Palm Beach	FL	33401

Purpose of Disbursement
Corporate Formation FeesCandidate Name
Lois J. Frankel

Category/ Type

Office Sought:	<input checked="" type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President
State: FL	District: 22

Disbursement For:	2012
<input checked="" type="checkbox"/> Primary	<input type="checkbox"/> General
<input type="checkbox"/> Other (specify) ▼	

Transaction ID: D346720

Date of Disbursement

MM	DD	YYYY
03	08	2011

Amount of Each Disbursement this Period

450.17

* In-Kind Received

SUBTOTAL of Disbursements This Page (optional)

719.79

TOTAL This Period (last page this line number only)

**SCHEDULE B (FEC Form 3)
ITEMIZED DISBURSEMENTS**

 Use separate schedule(s)
for each category of the
Detailed Summary Page

 FOR LINE NUMBER:
(check only one)

PAGE 71 / 71

<input checked="" type="checkbox"/> 17	<input type="checkbox"/> 18	<input type="checkbox"/> 19a	<input type="checkbox"/> 19b
<input type="checkbox"/> 20a	<input type="checkbox"/> 20b	<input type="checkbox"/> 20c	<input type="checkbox"/> 21

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee

NAME OF COMMITTEE (In Full)

Lois Frankel for Congress

A.

Full Name (Last, First, Middle Initial)

Louis Silber

Transaction ID: D338205

Date of Disbursement

03	31	2011
----	----	------

Mailing Address 1806 Old Okeechobee Rd

City
West Palm BeachState
FLZip Code
33409-5228

Amount of Each Disbursement this Period

500.00

Purpose of Disbursement

Office Space

Candidate Name

☐
Category/
Type

Office Sought:

House

Senate

President

Disbursement For:

2012

☒ Primary

General

Other (specify) ▼

State:

District:

* In-Kind Received

SUBTOTAL of Disbursements This Page (optional) ▶

500.00

TOTAL This Period (last page this line number only) ▶

1219.79

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EXHIBIT C

SCHEDULE B (FEC Form 3) **ITEMIZED DISBURSEMENTS**

Use separate schedule(s)
for each category of the
Detailed Summary Page

FOR LINE NUMBER:
(check only one)

PAGE 191 / 195

☒ 17 ☐ 18 ☐ 19a ☐ 19b
20a 20b 20c 21

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee

NAME OF COMMITTEE (In Full)

Lois Frankel for Congress

A.

Full Name (Last, First, Middle Initial)

Best Buy

Mailing Address 20540 State Road 7

City Boca Raton State FL Zip Code 33498-6740

Purpose of Disbursement
Telephone Equipment

Candidate Name

Category/
Type

Office Sought: ☐ House ☐ Senate ☐ President
Disbursement For: 2012
☒ Primary ☐ General
☐ Other (specify) ▼

State: District:

Transaction ID: D345426

Date of Disbursement

06 / 17 / 2011

Amount of Each Disbursement this Period

233.67

[MEMO ITEM]

B.

Full Name (Last, First, Middle Initial)

Staples, Inc.

Mailing Address 2029 Okeschobee Blvd

City West Palm Beach State FL Zip Code 33409

Purpose of Disbursement
Office Supplies

Candidate Name

Category/
Type

Office Sought: ☐ House ☐ Senate ☐ President
Disbursement For: 2012
☒ Primary ☐ General
☐ Other (specify) ▼

State: District:

Transaction ID: D345424

Date of Disbursement

06 / 17 / 2011

Amount of Each Disbursement this Period

74.60

[MEMO ITEM]

C.

Full Name (Last, First, Middle Initial)

Craig Auster

Mailing Address 701 St SE
Apt 803

City Washington State DC Zip Code 20003-4827

Purpose of Disbursement
Reimburse Supplies

Candidate Name

Category/
Type

Office Sought: ☐ House ☐ Senate ☐ President
Disbursement For: 2012
☒ Primary ☐ General
☐ Other (specify) ▼

State: District:

Transaction ID: D345428

Date of Disbursement

04 / 21 / 2011

Amount of Each Disbursement this Period

2589.45

SUBTOTAL of Disbursements This Page (optional) ▶

2589.45

TOTAL This Period (last page this line number only) ▶